IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Civil Revision No.224 of 2003.

Date of Decision: 25.6.2007.

Vijay Kumar. Petitioner.

Versus

Jeet Singh and others. Respondents.

Coram

Hon'ble Mr. Justice Surinder Singh , J.

Whether approved for reporting? Yes.

For the petitioner : Shri Sanjeev Kuthiala, Advocate.

For the respondent No.1 Shri Anil Chauhan, Advocate.

Surinder Singh, J (oral)

The instant revision petition has been filed by the JD-Objector feeling aggrieved and dis-satisfied by the order dated 1-7-2003 passed by Sub Judge Ist Class, Amb, District Una whereby his objections to the execution of the decree were dismissed.

Precisely, the facts giving rise to the instant petition are that Shri Bajinder Singh, the predecessor-in-interest of the respondents herein had filed a suit for possession by way of redemption of the shop before the trial Court against the petitioner herein. It was decreed. The possession was ordered to be delivered to said Shri Bajinder Singh on the deposit of the mortgage amount. Vijay Kumar (J.D.) filed an appeal against the judgment and decree of trial court which was dismissed by the first appellate Court. Even his regular second appeal was also dismissed by the High Court. Thereafter the decree holder Shri Bajinder Singh had died and the instant execution petition was filed by the statutory heirs, the respondents herein.

Judgment debtor had objected to the execution petition on the ground that he was entitled for the amount of rupees 10,000/- for the

Whether the reporters of the local newspapers are allowed to see the judgment? Yes.

improvement made in the premises in dispute, rupees 5500/- for the payment of the fixtures lying in the shop in dispute and that Shri Ajay Kumar was inducted as a tenant in the mortgaged premises by the judgment debtor with the consent of the mortgagor. This fact was never adjudicated in the previous suit and the appeal. Shri Ajay Singh is stated to have filed the civil suit which is sub-judice in Court No.2 at Amb. No specific decree for possession of the shop or final decree was passed and the legal representatives were not brought on record as per law.

The learned trial court dealt with each and every objection and ultimately, dismissed the objections being devoid of any merit against which the instant revision has been filed, inter alia on the ground that the trial Court did not appreciate the points taken by the judgment debtor (petitioner) in the right perspective which has resulted in the passing of the wrong and illegal order and further, that the execution petition was filed by the dead person and his legal representatives were not brought on record. Thus the execution petition was not maintainable.

I have heard Shri Sanjeev Kuthiala, learned counsel for the petitioner and Shri Anil Chauhan, learned counsel for respondent No.1 and carefully went through the file of the Executing Court.

During the arguments, learned counsel for the petitioner has pressed only one point that the decree holder Shri Bajinder Singh had died (Date and stage of the proceedings in suit not mentioned) and the respondents were not brought on record as per the provisions of order 22 rule 3 of the Code of Civil Procedure, therefore, the execution petition against the revision petitioner is not maintainable.

As a matter of fact, on the perusal of the entire record, it transpires that the judgment debtor had tried to prolong the execution of the decree on one pretext or the other exploiting every provision of the Code of Civil Procedure. It has also been brought to my notice that Shri Ajay Kumar, the alleged tenant, is the real brother of the petitioner (JD). His suit claiming the

tenancy over the premises in dispute was also dismissed. The judgment debtor has not given the date of death of the decree holder. But the perusal of the record reveals that he was alive when the regular second appeal, filed by the J.D. (petitioner) was dismissed by this Court. It appears that just before the filing of the execution petition D.H. had died. Admittedly, the respondents are his legal heirs, they filed the execution petition. The names of the legal heirs/representatives are clearly mentioned. The plea taken that they were not brought on record as per law is a fallacy. The provisions of order 22 rule 3 CPC are not applicable to the proceedings in case of death of a decree holder in execution proceedings. They are also not required to be formally brought on record or seek any permission to execute any decree with respect to the immovable property thus no formal order to bring them on record is required to be passed more specifically when they have not been denied as legal heirs of the deceased decree holder. The plea of tenancy of Ajay Kumar was never taken in the suit, therefore, it cannot be allowed now to be taken in the execution proceedings. As far as the payment regarding fixtures is concerned, the judgment debtor was not held entitled to it in the suit. The mortgage was only for Rs. 5000/- which was ordered to be deposited and the trial court had noticed this fact that this amount stands already deposited in the Government Treasury. Therefore, the judgment debtor (petitioner) or any other person claiming under him cannot retain the possession by any means not interceded by law. Thus, the learned trial Court has rightly rejected the objections of the judgment debtor.

Since I did not find any infirmity, perversity or illegality in the impugned order and no material prejudice has been caused to the petitioner. Therefore, for the reasons aforesaid, the instant revision petition deserves to be dismissed which is accordingly dismissed with costs.

(Surinder Singh)
Judge.

June 25, 2007.
(bm)